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The Honourable Lincoln Alexander
Lieutenant Governor of Ontario
Queen's Park
Toronto, Ontario
M7A 1A1

May it please Your Honour:

Pursuant to section 88 of the Courts of Justice Act, 1984, I have the honour to submit to the Lieutenant Governor in Council the Annual Report of the Ontario Provincial Courts Committee for the period April 1, 1985 to March 31, 1986.

Yours very truly,

Alan Marchment

Alan R. Marchment
Chairman
Ontario Provincial Courts
Committee

Encl.

c.c. The Honourable Robert Nixon
The Honourable Ian Scott





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ONTARIO PROVINCIAL COURTS COMMITTEE

Annual Report 1985-86

The Ontario Provincial Courts Committee is established pursuant to section 88 of the Courts of Justice Act, 1984. Its function is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges.

At the close of the period April 1, 1985 to March 31, 1986, the Committee consisted of:

Chairman: Alan R. Marchment, F.C.A.
President and Chairman of the Board
Guaranty Trust Company of Canada

Judges' Nominee: Vacant

Government Nominee: Arthur H. Clairman
Senior Vice-President and General Counsel
Olympia and York Developments

Mr. Edward L. Greenspan, Q.C., the judges' appointee to the Committee, resigned his position in November 1985. No person has been appointed to replace him.

On September 9, 1985, the Ontario Provincial Courts Committee submitted to the Lieutenant Governor in Council recommendations dealing with pension contributions transferred to the Public Service Superannuation Fund by provincial judges. On October 15, 1985, the Committee submitted recommendations on the question of salaries. Copies of these recommendations are attached.

Attach.

September 9, 1985

The Honourable John B. Aird, O.C., Q.C., B.A., LL.D.
Lieutenant Governor of Ontario
Queen's Park
TORONTO, Ontario
M7A 1A1

May it please Your Honour:

The Ontario Provincial Courts Committee wishes to present to you several recommendations involving the new retirement system for provincial judges. One of the judges has brought to the Committee's attention a situation that was not specifically considered by the Committee when its original pension recommendations were devised.

The situation involves judges who became contributors to the Public Service Superannuation Fund on their appointment to the bench and who, at the time of their appointment, had the option of transferring contributions from another pension plan to the PSSF. For example, prior to the implementation of the new judges' pension plan, if an employee of the federal government was appointed as a provincial judge, subsection 29(3) of the Public Service Superannuation Act permitted him to transfer to the PSSF the contributions that he had been required to make to the federal government's pension plan.

In our letter of June 25, 1984 to the Attorney General, the Ontario Provincial Courts Committee recommended that judges who "purchased military service or made other forms of voluntary contributions" to the Public Service Superannuation Fund should be able to receive a refund of those voluntary contributions. At the time this recommendation was made, the Committee did not specifically consider the possibility of an individual who was required to contribute to another pension plan but who, on his appointment to the bench, had the option of transferring those contributions to the PSSF.

After considering this issue, the Committee has come to the conclusion that these transferred contributions should be regarded as voluntary contributions and, therefore, should be considered within the scope of our earlier recommendation. Since the individual had the opportunity to choose whether to transfer the contributions from his former pension plan to the PSSF, contributions transferred were clearly

voluntary contributions. An individual who decided to transfer his contributions lost the refund he would otherwise have been entitled to and, therefore, we recommend that he be able to recover these voluntary contributions if they will not provide any additional benefit under the new judges' retirement system.

When a judge transferred contributions from a former pension plan to the Public Service Superannuation Fund, the employer's contributions to the former plan were also transferred. We would like to make clear that the recommendation made above only covers a refund to the judge's own contributions. There should be no refund of the transferred employer contributions, since, at the time of the judge's appointment to the bench, he could not have received a refund of his former employer's contributions.

The new judges' pension plan applies to judges who retired between October 1, 1979 and July 1, 1984, and, therefore, these judges should also be able to obtain refunds of contributions they voluntarily transferred from a former pension plan to the Public Service Superannuation Fund. However, since the level of benefits under the Public Service Superannuation Act depends on the amount of contributory service, judges who have received benefits under the Act will have received higher pension benefits because of the contributions that were transferred to the PSSF. Any refund of transferred contributions should be reduced by the amount of the additional pension benefits that have been received. In other words, retired judges should be able to obtain a refund of "unused" contributions that were voluntarily transferred to the PSSF.

Yours very truly,



Alan R. Marchment, F.C.A.



Edward L. Greenspan, Q.C.



Arthur H. Clairman

c.c. The Honourable Elinor Caplan
Chairman, Management Board of Cabinet

The Honourable Ian Scott, Q.C.
Attorney General

The Honourable David Alexander
Lieutenant Governor of Ontario
Queen's Park
Toronto, Ontario
N1A 1A1

Re: 1. Please Your Board

The Ontario Provincial Courts Committee wishes to present to you recommendations on the subject of salaries for provincial court judges.

On January 26, 1981, the former members of the Ontario Provincial Courts Committee and the members of provincial judges in Ontario over a period of four years to advise regarding with the salaries of provincial court judges by April 1, 1985. A copy of their recommendation is attached.

The 1981 recommendation has only been implemented. As of April 1, 1985, the salary which provincial judges will have the salary of a District Court judge, and a gratuity paid by Ontario will be the same as Justice of the Peace appointed Provincial Court judges would receive the District Court judge's salary of \$3,000 plus a gratuity of \$1,000. The Ontario Provincial Courts Committee has recommended that the 1981 recommendation be implemented as soon as possible and the Ontario Provincial Courts Committee has recommended that the government immediately review the position of provincial judges, in order for the present Committee on the 1985 salaries to have recommendations for the review of salaries. We consider it essential that the present recommendation be the 1981 recommendation.

The last salary increase for provincial judges was effective on April 1, 1980, just over one and a half years ago, and after improving nearly reflected changes in the cost of living. Because of the inaction of the government on the 1981 recommendation of the Ontario Provincial Courts Committee, the Committee recommends in the short term that the salary of provincial judges be increased to \$39,000, retroactive to April 1, 1985. In addition, the Committee recommends that the government should indicate that it will consider the question of salary increases for

October 15, 1985

The Honourable Lincoln Alexander
Lieutenant Governor of Ontario
Queen's Park
TORONTO, Ontario
M7A 1A1

May it please Your Honour:

The Ontario Provincial Courts Committee wishes to present to you recommendations on the subject of salaries for provincial court judges.

On January 30, 1981, the former members of the Committee recommended to the government that the salaries of provincial judges be increased over a period of four years to achieve equality with the salaries of District Court judges by April 1, 1985. A copy of that recommendation is attached.

The 1981 recommendation has not been implemented. As of April 1, 1985, the salary of a provincial judge was \$71,855. The salary of a District Court judge was \$89,900 (including \$3,000 paid by Ontario). The federal Minister of Justice has recently introduced legislation that, if enacted, would bring the remuneration received by a District Court judge to \$103,000, effective April 1, 1985 (including the \$3,000 paid by Ontario). Although it is clear that the 1981 recommendation of our predecessors has not been implemented, the government of Ontario has not, to the best of our knowledge, formally stated its position on the recommendation. In order for the present Committee to be in a position to make recommendations on the question of salaries, we consider it essential that the government formally respond to the 1981 recommendation.

The last salary increase for provincial judges was effective on April 1, 1984, just over one and a half years ago, and that increase merely reflected changes in the cost of living. Pending a formal response by the government to the 1981 recommendation of the Ontario Provincial Courts Committee, the Committee recommends in this ongoing process that the salary of provincial judges be increased to \$80,000, retroactive to April 1, 1985. In addition, the Committee recommends that the government clearly indicate that it will consider the question of salary increases for

judges independently of salary increases for the civil service. If the government were to take this step, it would assist in removing any perception that the judges are in any way part of the civil service.

Yours very truly,

Alan R. Marchment
Alan R. Marchment, F.C.A.

Edward L. Greenspan
Edward L. Greenspan, Q.C.

Arthur H. Chairman
Arthur H. Chairman

c.c. The Honourable Elinor Caplan
The Honourable Ian Scott, Q.C.

January 30, 1981

The Honourable George McCague,
Chairman,
Management Board of Cabinet,
7th Floor,
Frost Building South,
Queen's Park,
TORONTO, Ontario

Dear Mr. Minister:

The Ontario Provincial Courts Committee now has the honour to present to you its final recommendations on the subject of the remuneration to be paid the judges of the provincial courts.

The Committee has heard extensive submissions, expressed forcefully and thoroughly, on the question of remuneration. The basic position of the judges is that they should be paid remuneration equivalent to that received by judges of the county and district courts. Legislation now before the Parliament of Canada will have the effect of raising the annual salary of county court judges to \$72,500* effective April 1, 1981.

In 1968 the Report of the Royal Commission into Civil Rights (the McRuer Report) recommended that the salaries of magistrates should be equal to those of county court judges and that an equal standard of salaries should apply to juvenile and family court judges.

In 1973, in Part II of its Report on the Administration of Ontario Courts, the Ontario Law Reform Commission criticized the view that salaries of provincial court judges should be automatically equated with those of county court judges or with any other salaries established by another government. The O.L.R.C. did recommend, however, that the salaries of provincial court judges be raised.

Also in 1973, P.S. Ross & Partners undertook a study on the subject of compensation for the associations of the two divisions of provincial judges. The study compared the duties and qualifications of provincial court judges to those of lawyers in private practice, supreme and county court judges, crown attorneys and members of the Ontario Municipal Board and Land Compensation Board. According to the study, the positions of provincial court judges could be compared more meaningfully with those of county court judges than with the positions of the other groups. The study concluded that there should be reasonably close agreement between the total compensation for provincial judges and the total compensation for county and district court judges.

* includes the \$3,000 per year paid by the Province of Ontario for provincially-oriented services.

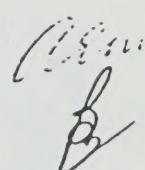
In 1974, the government of Ontario significantly changed its policy with respect to the remuneration of provincial court judges by replacing the previous system of salary ranges with a single fixed salary for all judges. The practical effect of the new salary provisions was to provide the provincial court judges with the same salary received by county court judges (\$34,000).

Since 1974, however, an ever-widening gap has developed between the salaries of provincial court judges and those of county court judges. This gap has occurred in the face of an opposite trend to expand the jurisdiction and responsibilities of provincial court judges.

For example, since 1972, amendments to the Criminal Code have broadened the jurisdiction of the Provincial Court (Criminal Division) to include the offences of bribery, rape, attempted rape, criminal negligence causing death, manslaughter, attempted murder and conspiracy to commit murder. New legislation respecting bail reform, interception of private communications and gun control has also given additional responsibility to the Provincial Court (Criminal Division). Another example of increased jurisdiction can be found in The Provincial Offences Act, 1979 which assigns to the Provincial Court (Criminal Division) authority to hear appeals from decisions of justices of the peace.

With respect to the Provincial Court (Family Division), recent legislation has also resulted in an increase in jurisdiction. For example, The Child Welfare Act, 1978 has transferred to the Provincial Court (Family Division) the adoption jurisdiction formerly exercised by the County Courts. The most significant changes, however, have occurred as a result of The Family Law Reform Act, 1978. Under that Act, the Provincial Court (Family Division) has been given new powers to award custody independently of maintenance, to make orders for the exclusive possession of a matrimonial home and to make restraining orders to prevent wasting of assets or harassment. These powers, in addition to expanded forms of support orders and new enforcement remedies, have greatly increased the responsibilities of the Court.

Having regard to the expanded responsibilities of provincial court judges referred to above, the Ontario Provincial Courts Committee concluded that there is no justifiable basis for paying provincial court judges less than county court judges. The Committee unanimously recommends that serious consideration be given to eliminating the disparity that now exists.



As a first step towards eliminating this disparity, the Committee unanimously recommends that the annual salary of every provincial court judge be increased by \$4,000, effective April 1, 1981. Adoption of this recommendation would raise the basic annual salary of a provincial court judge to \$60,000.

For subsequent years, the Committee recommends that further increases be granted so as to achieve equality of remuneration between the provincial court judges and the county court judges by April 1, 1985.

We submit these recommendations for your consideration. The Ontario Provincial Courts Committee will be communicating with you further on the matters referred to in Order-in-Council 643/80 other than remuneration.

Yours truly,

Clarence Shepard
Clarence Shepard

Arthur Maloney
Arthur Maloney
R.J. Butler
R.J. Butler

*Alvin
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